IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.01.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE N.PAUL VASANTHAKUMAR

WRIT APPEAL Nos.537 and 2008 of 2002

The Commissioner of Tamil Nadu
Raffles, 621, Anna Salai,
Chennai-6. .. Appellant in W.A.537/2002 &
Respondent in W.A.2008/2002

.vs.

Dr.Narayanan Poti ..Respondent in W.A.537/2002 &
Appellant in W.A.2008/2002

Writ Appeals filed under Clause 15 of the Letters of Patent against the order of the learned Judge Mr.P.Shanmugam dated 12.11.2001 made in W.P.No.17476 of 2001 filed under Article 226 of the Constitution of India praying to issue of a Writ of Mandamus directing the Respondent to pay the prize amount of Rs.27,50,000/- due to the petitioenr herein together with interest at 18% p.a from 27.05.88 the date of deposit of the prize winning lottery ticket, till date of payment.

For appellant/ : Mr. K.Elango, Spl.G.P.,
respondent in
WA.537/02 &
WA.2008/02

For respondent/ : Mr. A.Sivaji
petitioner in
WA.537/02 &
WA.2008/02

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COMMON JUDGMENT

(Judgement of the Court was delivered by P. SATHASIVAM,J.)

Aggrieved by the order of the learned single Judge dated 12.11.2001 made in W.P.No.17476 of 2001, the Commissioner of Tamil Nadu Raffles, Chennai 6, has filed Writ Appeal No.537 of 2002 and the writ petitioner has filed Writ Appeal No.2008 of 2002 for the enhancement of interest rate awarded by the learned single Judge.

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2. Heard the learned Special Government Pleader for the appellant/respondent as well as Mr. A. Sivaji learned counsel for respondent/writ petitioner.

3. Since the issue involved in these appeals is regarding payment of interest at 6% per annum from the date of successful winning of the lottery, viz., in May, 1988, we are of the view that it is unnecessary to traverse all the factual details as stated in the affidavit filed before the learned single Judge. According to the petitioner, he purchased three lottery tickets from Sri Eswari Lucky Centre on 25.05.1988 and came to know that one of the lottery tickets purchased by him got the first prize, i.e., Rs.25 lakhs. Thereafter, he deposited the prize winning ticket with the State Bank of Travancore, Pooyapalli Branch on 27.05.1988. The Bank, in turn, obtained necessary claim from the then Director of Tamil Nadu Raffles. The necessary form was also executed by the petitioner. He also deposited the counterfoil on 13.06.1988 with the said Bank.

4. According to the petitioner, he is the owner and holder of the prize winning ticket and the counterfoil. As per Rule 36(A) of the Tamil Nadu Raffles Rules, 1976, the holder of the prize winning ticket shall be entitled to claim the prize amount and the same cannot be made without production of the prize winning ticket as proof under any circumstance. The petitioner satisfied all the conditions and according to him, he is entitled to the prize money. While so, he came to know that one Ulaganathan filed a suit in O.S.No.220 of 1988 before Principal District Munsif's Court, Srivilliputhur seeking declaration that he (the plaintiff-Ulaganathan) is the true and lawful owner in respect of the prize winning ticket. The petitioner got himself impleaded in the said suit as third defendant. Private complaint was also lodged by the said Ulaganthan before the concerned Judicial Magistrate's Court against the petitioner and one Muneswaran. Subsequent to the order of this Court in CRP.No.47 of 1994, the plaintiff in the said suit filed Pauper O.P.No.7 of 1991 before the Sub-Court, Srivilliputhur and subsequently, it was taken on file as O.S.No.278 of 1996. Ultimately, the suit was dismissed on 18.06.1999 and thereafter, the writ petitioner filed W.P.No.3647 of 1992 before this Court praying for direction to respondents 1 and 2 therein to pay the prize amount of Rs.25 lakhs in respect of the lottery ticket and Rs.2.5 lakhs for the counterfoil. In that writ petition, the petitioner was directed to furnish bank guarantee or of property subject to the discretion of the concerned authority, viz., Director of Lotteries, Tamilnadu Raffles.

5. Pursuant to the said direction, the petitioner made a representation to the said authority followed by legal notice. According to the petitioner, in spite of his representations, the authority concerned neither deposited nor paid the amount, which necessitated him to file WP.No.17476 of 2001 for appropriate direction to the respondent for

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payment of the amount with interest at 18% per annum from 27.05.1988. The learned Judge, who heard the writ petition, after finding that there was no interim order in the suits against the payment of the amount to the writ petitioner and in any event, the Director of Raffles could have deposited the amount in a Government, Corporation or Nationalised Bank, and in such case, the petitioner could have got the benefit of interest accrued, issued direction for payment of the prize amount with interest at the rate of 6% per annum from the date of successful winning of the lottery i.e., May,1988. In the same order, the learned Judge further directed that the amount with interest should be paid within a period of 45 days, failing which the amount would carry 12% interest thereafter till the date of payment. Questioning the direction relating to interest, the Commissioner of Raffles, filed Writ Appeal No.537 of 2002 and for the enhancement of rate of interest, the writ petitioner filed Writ Appeal No.2008 of 2002.

6. The learned Special Government Pleader appearing for the appellant/respondent by drawing our attention to various dates and events commencing from 25.05.1988 ending with payment of prize money i.e., on 26.09.2003, submitted that there was no delay on the part of the Government or the concerned authority, but due to dispute with regard to entitlement of the prize money as well as non-compliance of the directions of this Court on the part of the writ petitioner, the matter got delayed and hence, the learned Judge is not justified in awarding interest. He relied on a Division Bench decision of Allahabad High Court reported in Mirza Javed Murtaza vs. U.P. Financial Corporation [AIR 1983 Allahabad 234].

7. On the other hand, learned counsel appearing for the respondent/writ petitioner submitted that even after disposal of the suits, the money was not either deposited or paid to the petitioner and because of the delay on the part of the authority, the learned Judge is justified in awarding interest, and prayed for the enhancement of rate of interest.

8. We have carefully considered the rival contentions of learned counsel for the parties.

9. Admittedly, there was a dispute with regard to the ownership and entitlement of the prize money and suits were filed. Even thereafter, viz., after dismissal of the suits, directions were issued by this Court to the writ petitioner for fulfilling certain conditions for settlement of the prize money and according to the appellant/respondent, those conditions were not fulfilled in time. The learned counsel for the respondent/writ petitioner disputes the same. In order to appreciate the stand taken by both sides, we feel it relevant to advert to the particulars furnished in the form of dates and events by the Special Government Pleader, which are as follows:

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S.No.	Date	Events
1	25.05.1988	Prize winning ticket bearing No:AIH-236928 fetched the special first price of Rs.25 lakhs in the Madurai District Bumper Draw held on 25.05.1988.
2	31.05.1988	The Government in their D.O.letter No.73057/Raffle/88-1, dated:31.05.1988, directed the Department to withheld payment if any due to Prize Winning Ticket AIH-236928 and enclosing a copy of telegram from Thiru Ulaganathan.
3	17.06.1988	The Prize Winning Ticket bearing the No:AIH-236928 and its counterfoil were received from the Dr. Narayanan Pothi through the State Bank of Thiruvancore, Chennai Branch on 17.06.1988.
4	.06.1988	O.S.No:220/88 was filed in the District Munsif Court by Thiru Ulaganathan stating that the ticket referred to above was purchased by him.
5	16.12.1989	Principal District Magistrate Srivilliputhur directed this Department in his letter dated:16.12.1989 to produce the Prize Winning ticket to the Honourable Court on 05.01.1990.
6	18.12.1989	Again Srivilliputhur District Magistrate directed this department in his letter dated:18.12.1989 not to produce the said prize winning ticket to the court until further orders.
7	17.12.1991	The Case No:O.S.No:220/88 was Dismissed as withdrawn in the District Munisf Court of Srivilliputhur with a liberty to file fresh petition and accordingly fresh petition in case No.POP.7 of 91 was filed in the Sub-Court, Srivilliputhur. (By Thiru Ulaganathan)
8	6/5/92	Thiru Narayanan Poti filed W.P. in Madras High Court in W.P.No:3647/92 seeking direction for payment of prize money.
9	From 1992 to 1996	Lower Court case and High Court case are under enquiry.
10	1996	Thiru Ulaganathan filed a case at Sub-Court, Srivilliputhur in Case No:278/96-Filing Stay petition.
11	2/9/97	The Madras High Court in their order dated:02.09.1997 directed the Director to produce the original prize winning ticket No:AIH-236928 on 16.09.1997.

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S.No.	Date	Events
12	16.09.1997	Ticket was produced to the Madras High Court by the Director of Raffles on 16.09.1997.
13	20.02.1998	Madras High Court on 20.02.1998 ordered to make the payment of prize money to Thiru Narayanan Pothi by furnishing of B.G. Or Mortgage of property to avoid the payment of double payment.
14	18.05.1998	The petitioner was requested to furnish Bank Guarantee for Rs.25 Lakhs in Rc.No.1817/B2/88 to enable the department to make the payment of prize money to him.
15	28.07.1998	He was reminded on 28.07.1998.
16	28.09.1998	Letter sent on 28.09.88 to the petitioner requesting him to furnish a Bank Guarantee for making prize money which should have a time limit for 5 years initially and which should be renewed further and kept alive until the disposal of the Civil Case in Rc.1817/C2/88 Dt.:28.09.1998.
17	9/11/98	He was reminded on 09.11.1998 in this regard.
18	24.12.1998	Reminder was sent on 24.12.1998 again.
19	18.06.1999	O.S.No:278/96 filed by Thiru Ulaganathan, Dismissed on 18.06.1999 at Sub-Court, Srivilliputhur.
20	9/8/99	Letter forwarding lower court orders was received from the petitioner on 09.08.1999 (Letter Dated:04.08.1999).
21	4/4/00	Letter sent to Th.Narayanan Pothi on 04.04.2000 for furnishing an undertaking duly signed by a Notary Public for the claims value of Rs.25 lakhs and Rs.2.5 lakhs being the prize money and counterfoil Bonus.
22	30.05.2000	Letter sent to Thiru Narayanan Pothi on 30.05.2000 requesting him to send a revised undertaking duly incorporating the following sentence in the last para of the undertaking. "Certified that the prize and counterfoil payment of Rs.27.5 lakhs will be the first and final payment to be paid to me by the Directorate of Tamil Nadu Raffle Department is not responsible for the delay in payment of the above sum."

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S.No.	Date	Events
23	26.06.2000	The petitioner informed the Department not to insist for any undertaking regarding payment of prize money and demanded 18% interest. He further stated that he will move the court if the department fails to make the payment of prize money with 18% interest.
24	29.06.2000	Opinion of the Government Pleader dated 29.06.2000 not to make payment of interest.
25	28.05.2001	Government directed this department to release the prize money after knowing that Thiru Ulaganathan has not filed any appeal in the Madras High court dt.28.05.2001 and no appeal was filed in High Court of Madras by Thiru Ulaganathan vide the Spl.Govt. Pleader's letter dtd.28.09.2001.
26	12/11/01	Honourable Single Judge of the Madras High Court passed order directing the Department to Pay the prize money to the petition with 6% interest from May 1988 onwards within 45 days. If the amount is not paid within 45 days interest has to be paid at 12% (in W.P.17476/2001).
27	7/2/02	Writ Appeal bearing No.537/2002, filed by this Department, against the orders of the case W.P.No.17476/2001 dtd.12.11.2001.
28	3/4/02	Stay granted in W.A.No.537/2002 by Honourable Division Bench of High Court of Madras, on 03.04.2002 against the orders of the case W.P.No.17476/2001, dtd.12.11.2001.
29	.9.2003	The Writ Appeal W.A.537/2002 came up for hearing and finally, judgement delivered on 19.9.2003, that payment of prize money to be given to the petitioner within 15 days time from the date of order.
30	26.09.2003	Payment of prize money after deducting Income tax of Rs.18,42,500/- was paid to Dr.R.Narayanan Poti, Kerala and acknowledgement received from him.

10. The above mentioned details clearly show that the appellant is in no way responsible for not settling the amount within reasonable time. It is also not in dispute that there is no provision in the Tamilnadu Raffles Rules, 1976 for payment of interest for belated settlement of prize money. In this regard, it is relevant to refer the Division Bench decision of Allahabad High Court in Mirza Javed Murtaza case, cited supra, relied on by the learned Special Government Pleader. With regard to claim of interest without a specific agreement and in the absence of statutory provision or guidelines or custom or usage, the Division Bench has concluded,

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"The law with regard to claim for interest is also by now well settled. The claim for interest may be sustained only in cases where the same is claimed either in terms of the agreement itself or when it is permitted by some law or custom or usage having the force of law. Interest may be awarded for the period prior to the date of the institution of the suit, if there is an agreement for the payment of interest at fixed rate, or, if interest is payable by the usage of trade having the force of law, or under the provisions of any substantive law entitling the plaintiff to recover interest, as for instances, under S.30 of the Negotiable Instruments Act and under S.61 of the Sale of Goods Act or Interest Act. Interest can be awarded if there was a debt or a 'sum certain' payable at a certain time or otherwise by virtue of some written contract and there must have been a demand in writing, stating that interest will be demanded from the date of the demand (see Thawardas Pherumal .vs. Union of India, AIR 1955 SC 468 and Union of India vs. Rallia Ram, AIR 1963 SC 1685). In the absence of any usage or contract, express or implied, or of any provision of law to justify the award of interest, the court cannot award interest by way of damages caused on account of wrongful detention of money."

11. In the light of the factual details of our case, which we have already narrated in the earlier paragraphs and of the fact that there is no provision in the Tamil Nadu Raffles Rules, 1976, we are in respectful agreement with the view expressed by the Allahabad High Court in the above said case. In this view of the matter, we are of the view that the learned Judge is not justified in awarding interest either 6% or 12% for alleged defaulted payment. Equally, we are not in agreement with the observation made by the learned Judge that the appellant/respondent could have deposited the amount in Government, Corporation or Nationalised Bank pending various proceedings. It is not in dispute that there will not be any difficulty in getting the amount from Government. In such circumstances, there is no need to deposit the amount when admittedly, there were prolonged proceedings pending initially before the civil court and thereafter before this Court. In the facts and circumstances and materials placed, we are satisfied that there is no wilful delay on the part of the appellant/respondent in making the payment of the prize money after declaration that the writ petitioner is prize winner.

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Under these circumstances, the order of the learned single Judge dated 12.11.2001 made in W.P.No.17476 of 2001, in so far as it relates to the payment of interest is set aside; consequently, W.A.No.537 of 2002 is allowed. In view of our conclusion in WA.No.537 of 2002, we find no merit in the claim made by the writ petitioner for the enhancement of rate of interest. Accordingly, W.A.No.2008 of 2002, is dismissed. No costs in both the writ appeals.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

kh

To

The Commissioner of Tamil Nadu Raffles,
621, Anna Salai, Chennai -6.

2 cc To Mr.A.Sivaji, Advocate, SR.35, 28.
1 cc To The Government Pleader, SR.144.

Writ Appeal Nos.537 &2008/02

GM(CO)
RVL 18.01.2007

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